

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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RAFAEL ROSA ,

Plaintiff,

Index No. 09 Civ. 8563 (RJS)

-against-

AMERICAN AIRLINES INC., and

**VERIFIED  
AMENDED COMPLAINT**

John Does 1 through 5.

Defendants.

Jury Trial Demanded

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Plaintiff RAFAEL ROSA, by and through his undersigned attorneys, McCallion & Associates LLP, bring this complaint against AMERICAN AIRLINES INC. and others whose identities are presently unknown, as follows:

**THE PARTIES**

1. At all relevant times, Rafael Rosa ("Plaintiff Rosa" or "Rosa") resided in New York County.
2. Defendant AMERICAN AIRLINES, INC. (hereinafter "defendant American" or "American"), is and at all times relevant hereto, is a Delaware corporation authorized to do business, and doing business, in the State of New York.
3. Upon information and belief, John Does 1 through 5 are individuals employed by or associated with defendants American, or who were passengers on the flight where the events complained of occurred, who participated in the acts complained of herein, but whose identities are presently unknown.

**JURISDICTION AND VENUE**

4. This Court has diversity jurisdiction over this matter.

5. Venue is proper in this Court since Plaintiff resides in this District.

**STATEMENT OF FACT**

6. On or about October 8 2007, plaintiffs RAFAEL ROSA was a passenger on American flight number 674 ("the plane"), from Ft. Worth/Dallas Airport to JFK International Airport in New York City.
7. At all times hereinafter mentioned, defendant AMERICAN owned, operated or controlled the plane.
8. On or about October 8, 2007 plaintiff ROSA was talking to some other passengers in Spanish when John Doe # 1, a passenger on the same flight, started talking to plaintiff, making various noises and rudely demanding that plaintiff stop talking.
9. Plaintiff continued to finish his conversation in a low voice, whereupon John Doe # 1 became increasingly loud and agitated. All of this noise and commotion by John Doe # 1 was overheard and observed by an American flight attendant, named "Elizabeth," who did nothing and took no measures to prevent John Doe # 1 from escalating the matter into a violent confrontation.
10. Finally, after several minutes, John Doe # 1 violently pushed Rosa, causing his head to hit the seat in front of him and otherwise causing him physical injuries.
11. Only after John Doe # 1 had assaulted plaintiff did the flight attendant, "Elizabeth," intervene and ask John Doe # 1 if he knew the passenger he had pushed (Rosa), to which John Doe # 1 reply in the negative.
12. Flight attendant Elizabeth then assured Rosa that she would report the incident and assured plaintiff Rosa that "she would take care of it."

13. After Elizabeth was in the cockpit for approximately fifteen minutes, she returned and spoke to plaintiff Rosa in the galley of the plane, informing them that she had spoken with “Captain Harris” and asking plaintiff Rosa if he wished to “press charges” against the other passenger. Plaintiff Rosa responded, “Yes.”
14. However, when the plane arrived at JFK Airport, the head flight attendant informed plaintiff Rosa and his traveling companion, Joseph Kleinplatz, that it was “too late to do anything,” that “everyone was tired” and that “she didn’t want to hold the crew back.”
15. On October 11, 2007, plaintiff Rosa was treated at St. Vincent’s Hospital in Manhattan for severe headaches, cervical damage to his spine and whiplash. He also suffered from, and continues to suffer from, sleep disturbance and insomnia.

**AS AND FOR A FIRST CAUSE OF ACTION  
( Negligence)**

16. Plaintiff repeats, reiterates and realleges the foregoing paragraphs of this Complaint as if fully set forth herein.
17. Defendant American, and its employees and agents who were aboard Flight 674, were negligent in that they failed to fulfill their responsibility to maintain the safety of the passengers on the flight and to ensure that they would not be subject to, among other things, assault and battery by other passenger on the flight.
18. Prior to the assault on plaintiff, defendant American and its agents, including flight attendant “Elizabeth,” were on notice that John Doe # 1 was acting inappropriately and becoming increasingly agitated and acting belligerently

towards the plaintiff. Nevertheless, American and its agents did nothing to attempt to prevent or restrain John Doe # 1 from confronting plaintiff.

19. As a direct and proximate cause of Defendant's negligence, carelessness, and reckless conduct, plaintiff Rosa sustained severe injuries, and has been and may continue to be prevented from attending to his usual activities, duties and obligations.

**JURY TRIAL DEMAND**

19. Plaintiff demands a trial by jury on all issues so triable.

**WHEREFORE**, plaintiffs seeks (a)compensatory and punitive damages from Defendants for Negligence in an amount to be determined at trial, together with interest , attorneys fees and costs of action , and (b) such other and further relief as this Court deems necessary and proper.

Dated: New York, New York  
November 17, 2009

**McCALLION&ASSOCIATES LLP**

By: 

Kenneth F. McCallion  
Attorneys for Plaintiffs

100 Park Avenue  
16<sup>th</sup> Floor  
New York, New York 10017  
(646) 366-0880

PLAINTIFF'S VERIFICATION

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF NEW YORK)

RAFAEL ROSA, being duly sworn, deposes and says: I am the Plaintiff in the within action; I have read the foregoing Verified Amended Complaint and know the contents thereof; the same is true to my own knowledge, except as to the matters stated to be alleged on information and belief, and as to those matters, I believe them to be true.

  
RAFAEL ROSA

Sworn to before me this

19 day of November, 2009

  
NOTARY **BRAD SILVERMAN**  
Notary Public, State of New York  
No. 01818186500  
Qualified in Westchester County  
Commission Expires May 5, 2012

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF NEW YORK    )

Willy Quinones, being duly sworn, deposes and says:

1. I am not a party to the within action, am over the age of 18 and reside in Bronx, New York.

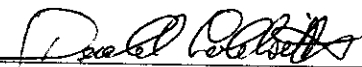
2. On November 20, 2009, On each person named below, I caused to be served copies of the **VERIFIED AMENDED COMPLAINT via REGULAR MAIL** by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State addressed to the following person(s) at the last known address(es) as set forth below:

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Rutherford & Christie LLP  
369 Lexington Avenue  
8<sup>th</sup> Floor  
New York, NY 10017

  
WILLY QUINONES

Sworn to before me this 20th  
day of November 2009.

  
Notary Public

DONALD GOLDSMITH  
Notary Public, State of New York  
No. 01GO5021034  
Qualified in Westchester County  
Commission Expires Dec. 6, 2009